



COMMONWEALTH of VIRGINIA

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CLIFTON-STEWART DEVELOPERS, INC.
FOR THE
Former Builders Super Market of Abingdon, Inc. Site
Unpermitted Facility
Incident Report ("IR") No. 2018-S-1115**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Clifton-Stewart Developers, Inc., regarding the Builders Super Market of Abingdon, Inc. Site, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "Clifton-Stewart" means Clifton-Stewart Developers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Clifton-Stewart Developers, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the former Builders Super Market of Abingdon, Inc. Site, located at 15853 Porterfield Highway, near Abingdon, in Washington County, Virginia, which is owned by Clifton-Stewart Developers, Inc.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
9. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 6, 2017, DEQ staff conducted a site visit at the location of the former Builders Super Market of Abingdon, Inc., located at 15853 Porterfield Highway, Abingdon, Virginia. The property is now owned by Clifton-Stewart Developers, Inc. The site visit was conducted in response to a reported fire. Upon arrival at the site, DEQ staff found a significant portion of the buildings on the property had been burned on site. DEQ staff observed two partially burning piles and observed that the piles contained metals, building supplies, paint cans, buckets, plastic, insulation, and various clean fill materials. Four piles of solid waste on site had not been burned, consisting of metals, some roofing, corrugated pipe, clean fill and containers.
2. Va. Code § 10.1-1408.1 states: "A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the director."
3. 9 VAC 20-81-40 requires that: "A. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director. B. No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter. C. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. D. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place."

4. On December 7, 2017, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-015-1217-SW to Clifton-Stewart Developers, Inc. for the violations described in paragraph C(1) above.
5. On December 11, 2017, Clifton-Stewart Developers, Inc. submitted documentation regarding the demolition permit issued by Washington County, Virginia, the asbestos survey dated March 15, 2016, and associated documentation.
6. On December 12, 2017, Department staff met with Mr. Jimmy Stewart of Clifton-Stewart Developers, Inc. to discuss the violations. Mr. Stewart submitted copies of covenants and restrictions for different housing developments which contained language regarding "burn pits". Tipping receipts for materials hauled to the landfill from the site prior to the fire were also submitted. A total of 76.49 tons of material had been hauled to the Washington County Landfill, at a total cost of \$4,577.50 (\$35.00 per ton). Mr. Stewart indicated that, had materials not been burned, approximately the same amount of materials remained and would have been hauled to the landfill.
7. Mr. Stewart called DEQ staff on January 22, 2018 and indicated that cleanup of the Site was complete, with only one small pile of ash remaining. Mr. Stewart agreed to provide copies of all tipping receipts for remaining materials, ash, etc. that had been hauled to the Washington County Landfill to complete cleanup of the Site. He also agreed to provide weight ticket(s) for segregated metals that had been sold for recycling. These receipts and weight ticket were received by DEQ on February 9, 2018.
8. On February 1, 2018, DEQ staff visited the Site and verified that all of the solid waste previously documented, and any residuals, had been removed.
9. Based on the results of the November 6, 2017 inspection, the December 12, 2017 meeting and documentation submitted on December 11, 2017, December 12, 2017, and February 9, 2018, the Board concludes that Clifton-Stewart Developers, Inc. has violated 9 VAC 20-81-40.A – D and Va. Code § 10.1-1408.1, as described in paragraph C(1), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Clifton-Stewart Developers, Inc., and Clifton-Stewart Developers, Inc. agrees to pay a civil charge of \$12,452.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Clifton-Stewart Developers, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Clifton-Stewart Developers, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Clifton-Stewart for good cause shown by Clifton-Stewart, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-015-1217-SW dated December 7, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Clifton-Stewart admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Clifton-Stewart consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Clifton-Stewart declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Clifton-Stewart to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Clifton-Stewart shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Clifton-Stewart shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Clifton-Stewart shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Clifton-Stewart. Nevertheless, Clifton-Stewart agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Clifton-Stewart has completed all of the requirements of the Order;
 - b. Clifton-Stewart petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Clifton-Stewart.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Clifton-Stewart from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Clifton-Stewart and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Clifton-Stewart certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Clifton-Stewart to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Clifton-Stewart.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Clifton-Stewart voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31st day of July, 2018.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Clifton-Stewart Developers, Inc. voluntarily agrees to the issuance of this Order.

Date: 5-15-18 By: [Signature] PRASIDA
(Person) (Title)
Clifton-Stewart Developers, Inc.

Commonwealth of Virginia
City/County of Washington

The foregoing document was signed and acknowledged before me this 15 day of
May, 2018, by Jimmy Stewart who is
President of Clifton-Stewart Developers, Inc., on behalf of the
corporation.

Taylor Keene
Notary Public
7770682
Registration No.

My commission expires: August 31, 2022

Notary seal:

